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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,263	10/31/2001	Robert Olsen	ITW-13410	3925

7590

09/24/2003

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EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 09/24/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,263

Applicant(s)

OLSEN ET AL.

Examiner

Jila M Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 2-7 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Olsen (6,182,821). Olsen '821 discloses a carrier constructed of a planar sheet of flexible plastic material for carrying a plurality of containers, the carrier comprising; a plurality of container receiving openings (20) arranged in a single longitudinal row (each row of the container receiving openings are arranged in a single longitudinal row), each container receiving opening engaging a container; a panel (30) extending transversely from the longitudinal row; and a handle (elongated aperture) along an outer periphery of the panel (inasmuch as applicant has defined the handle as shown in Figure 1 embodiment of the instant application to be positioned at an outer periphery of the panel, the handle of Olsen '821 is also positioned at an outer periphery of the panel, regardless of the location of the label). The panel will inherently invert upwardly and at least partially against the containers when the handle is lifted.

With respect to claim 3, note the cutouts in panel (30) in Figure 1 embodiment.

With respect to claim 4, note the label (25) in Figure 1 embodiment.

With respect to claim 6, note the line of weakness (40) in Figure 1 embodiment.

With respect to claims 7, note edges (19) in Figures 1 and 4 embodiments.

3. Claims 2-3, 5, 7 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Marco et al. (5,072,829). Marco '829 discloses a carrier constructed of a planar sheet of flexible plastic material for carrying a plurality of containers, the carrier comprising; a plurality of container receiving openings (14) arranged in a single longitudinal row (each row of the receiving openings are arranged in a single longitudinal row); each container receiving opening engaging a container; a panel (40) extending transversely from the longitudinal row; and a handle (elongated aperture) along an outer periphery of the panel, (inasmuch as applicant has defined the handle as shown in Figure 1 embodiment of the instant application to be positioned at an outer periphery of the panel, the handle of Olsen '821 is also positioned at an outer periphery of the panel). The handle positioned in the panel. The panel will inherently invert upwardly and at least partially against the containers when the handle is lifted. See Figures 1 and 2 embodiments.

With respect to claim 3, note the cutout in panel (40) in Figure 1 embodiment.

With respect to claims 7, note edges (60) in Figure 2 embodiment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen `821. With respect to claims 8 and 19 and the angle that the containers are carried, this will depend on the size and weight of the plurality of containers being carried.

With respect to claim 11, note the line of weakness (40) in Figure 1 embodiment.

With respect to claim 12, note the pull tab (45) extending from the line of weakness (40) in Figure 1 embodiment.

6. Claims 8-10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marco `829. With respect to claims 8 and 19 and the angle that the containers are carried, this will depend on the size and weight of the plurality of containers being carried.

7. Claims 2-5, 7-10, 14-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marco et al. (6,230,880) in view of Solmski (5,868,659). Marco `880 discloses a carrier constructed of a planar sheet of flexible plastic material for carrying a plurality of containers, the carrier comprising; a plurality of bottles/container receiving openings (20) arranged in a single longitudinal row (each row of the receiving openings are arranged in a single longitudinal row); each container receiving opening engaging a container; a panel (35) extending transversely from the longitudinal row. The panel can be used as a handle and is strong enough to support the weight of the containers if used as a handle for the carrier (See column 1, lines 42-45). The panel (35) accommodates UPC and proof of purchase labels, graphics and promotional information. Marco `880 does not appear to teach an elongated aperture positioned

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along the outer periphery of the panel. Slomski `659 discloses that providing elongated apertures along the outer periphery of a panel is desirable to facilitate ease of handling of the carrier. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide elongated apertures along the outer periphery of the panel of Marco `880 as taught by Slomski `659 to facilitate ease of handling of the carrier.

With respect to claim 3, note cut outs (25) in Figure 1 embodiment.

With respect to claim 4, see column 4, lines 3-9.

With respect to claim 18, note weakened area (40) in Figure 2 embodiment, which generates a sharp crease when the panel is inverted.

With respect to claims 8, 14 and 19 and the angle that the carriers are carried, this will depend on the size and weight of the plurality of containers being carried.

8. Claims 6, 11-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1, 8 and 14 above, and further in view of Olsen (6,148,994). Marco `880 as modified above discloses all the limitations of the claims except for a line of weakness extending between the panel and the bottles/containers. Olsen `994 discloses a line of weakness (80) extending between the panel and the bottles/containers and a pull tab to permit easier removable of each bottle from within the respective container receiving openings. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a line of weakness with a pull tab between the panel and bottles of Marco `880 as taught by Olsen 994 to permit for easier removal of the bottles from the carrier.

Response to Arguments

9. Applicant's arguments filed July 21, 2003 have been fully considered but they are not persuasive.

Contrary to applicant's arguments the pluralities of the container openings in the all the above references are indeed arranged in a single longitudinal row. Each row of the container receiving openings is arranged in a single longitudinal row.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide elongated apertures along the outer periphery of the panel of Marco '880 as taught by Slomski '659 to facilitate handling of the carrier.

In response to applicant's argument that Slomski Patent teaches directly away from the claimed invention by requiring that panel 42 comprise a separate assembly that is mated perpendicularly to the carrier body, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648. For applicant's

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convenience, the Group Technological Center FAX number is (703) 872-9306. (Note that the Examiner cannot confirm receipt of faxes) Please identify Examiner Mohandesi of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.


Inquiries only concerning the merits of the examination should be directed to Jila Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

Check out our web-site at "www.uspto.gov" for fees and other useful information.

**JILA M. MOHANDESI
PRIMARY EXAMINER**


Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
September 23, 2003